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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Kelley Rajala,

Plaintiff,

vs.

Sonoma County Go Local Cooperative,  
Incorporated, et al.,

Defendants

Sonoma County Go Local Cooperative,  
Incorporated and Sustaining Technologies,  
LLC,

Counterclaimants,

vs.

Rajala, Kelley, an individual, and  
Local Works, Flexible Purpose Corporation, A  
California Corporation,

Counterclaim Defendants.

Case No.: 15-CV-00442-JST

**NOTICE OF MOTION AND MOTION  
FOR PARTIAL SUMMARY  
JUDGMENT BY SONOMA COUNTY  
GO LOCAL, INC. AND SUSTAINING  
TECHNOLOGIES, LLC;  
MEMORANDUM OF POINTS &  
AUTHORITIES IN SUPPORT  
THEREOF**

Date: August 18, 2016

Time: 2:00 pm

Dept: Courtroom 9 - 19th Floor

Honorable Jon S. Tigar

Deadline to File Dispositive Motions:  
07/01/2016

Pretrial Conference: 09/09/2016

Trial: 09/26/2016

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that on August 18, 2016, at 2:00 p.m., before the Honorable  
3 Jon S. Tigar in Courtroom 9 on the 19<sup>th</sup> Floor of the United States District Court, San Francisco  
4 Division, 450 Golden Gate Avenue, San Francisco, California, Defendants Sonoma County Go  
5 Local Cooperative, Incorporated and Sustaining Technologies, LLC, (collectively, “Defendants”)  
6 will and hereby do move the Court for partial summary judgment in favor of Defendants and  
7 against Plaintiff Kelley Rajala (“Rajala”) with regard to Rajala’s claims for copyright  
8 infringement, contributory copyright infringement, vicarious copyright infringement, and false  
9 advertising, alleged in the Complaint on file herein, and for an order that any final judgment  
10 entered in this action against Defendants shall, in addition to any matters determined at trial,  
11 award judgment as established by such adjudication.  
12

13  
14 This motion is made on the grounds that Rajala’s copyright registrations are invalid  
15 group registrations, and are also invalid single work registrations. Without proper registrations,  
16 Rajala cannot maintain her claims for copyright infringement and false advertising against  
17 Defendants. This motion is also made on the grounds that Rajala’s logo designs and the  
18 registered compilation thereof, lack the requisite level of originality to maintain a claim for  
19 copyright infringement.  
20

21 This Motion shall be based on this Notice, the Memorandum of Points and Authorities in  
22 Support, the Declaration of Craig M. Stainbrook, and such evidence as is presented at the time of  
23 the hearing, and any other material the Court shall deem just and proper.  
24

25 Respectfully Submitted,  
26 **STAINBROOK & STAINBROOK, LLP**  
27 By: /s/ Craig M. Stainbrook  
28 Craig M. Stainbrook  
*Attorneys for Defendants*

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT  
PURSUANT TO CIVIL LOCAL RULES 7-1, 7-2, 56-1, 56-2**

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1 **I. INTRODUCTION**

2 This is an action for copyright infringement by Plaintiff Kelley Rajala (“Rajala”) against  
3 Sonoma County GoLocal Cooperative, Incorporated (“SCGLC”) and Sustaining Technologies,  
4 LLC (“ST”), under the United States Copyright Act, 17 U.S.C. § 101, *et seq*, as well as false  
5 advertising, unjust enrichment, cancellation of state trademark registration under California State  
6 law, declaratory relief, and related causes of action. By her originally filed Complaint (the  
7 operative pleading), Rajala accuses Defendants of using logos in connection with their  
8 businesses that that infringe copyright rights Rajala purports to own in a registration featuring  
9 numerous different GoLocal designs (the “GoLocal Logos”).

10 The alleged predicate for this litigation rests on a single copyright registration Rajala  
11 obtained. The registration comprises a single page displaying several rows and columns of 30  
12 different GoLocal Logos. As a basis for suit, the predicate is flawed and legally untenable.

13 Firstly, Rajala’s copyright registration is an invalid “single work” registration because it  
14 includes a group of published works not first published together, and therefore it fails to qualify  
15 as a “single unit of publication” for purposes of a “single work” registration. On this basis alone,  
16 the claims for copyright infringement must be dismissed.

17 Secondly, even if the registration were valid, the purported “works” (the individual logos)  
18 comprising the registration constitute nothing more than a very ordinary geometric shape (a  
19 circle) with simple color fill, and including a few words in an ordinary typeface. None of the  
20 elements singularly or in combination constitutes a work having sufficient originality to warrant  
21 protection under the Copyright Act. Further, even the selection, arrangement, and organization of  
22 the GoLocal Logos in the registration is nothing more than those ordinary shapes and words put  
23 into rows and columns. Nothing about the single sheet itself rises to the threshold level of  
24 originality required for protection under the Copyright Act. The GoLocal Logos standing alone  
25 or as arranged in rows and columns lack sufficient originality to merit copyright protection.

26 Thirdly, even if the registration was considered to be a valid compilation protecting  
27 previously published works, the compilation includes works owned by SCGLC because they are  
28 works created by Rajala in the course and scope of her employment with SCGLC. Therefore,  
under applicable Copyright law, SCGLC is the author of a substantial portion of the compilation  
or collective work. In consequence, SCGLC has the rights, whatever they may be, in the works  
prepared by Plaintiff within the scope of her employment.

1 Finally, the registration as a compilation is also invalid, as it comprises nothing more than  
2 a mechanical selection, arrangement, and coordination of the previously published GoLocal  
3 Logos, and therefore it also does not rise to the level originality sufficient to merit copyright  
4 protection. Any protection that might be conferred on the compilation extends only to the  
5 specific selection, arrangement and coordination of the previously existing works, not in the  
6 individual works themselves, and Plaintiff has no evidence that Defendants have reproduced or  
7 distributed any materials that include such a selection, arrangement, or coordination.

8 For each of these reasons, Defendants are entitled to summary adjudication on Rajala's  
9 copyright claims and the derivative claim for false advertising, which is based on all of the  
10 alleged operative facts on which the copyright claims rest.

## 11 **II. PROCEDURAL BACKGROUND**

12 On January 30, 2015, Plaintiff filed an original complaint against SCGLC and ST  
13 alleging causes of action for copyright infringement as to the Work incorporated into the  
14 Complaint, as well as California false advertising, unjust enrichment, cancellation of California  
15 trademark, and declaratory judgment. (Dkt. No. 1) The originally filed complaint is the operative  
16 pleading in this action.

17 On April 3, 2015, SCGLC and ST answered and counterclaimed against Rajala and Local  
18 Works, Flexible Purpose Corporation ("Local Works"), seeking declaratory relief (of non-  
19 infringement), declaratory relief of invalidity and cancellation of copyright registration, a  
20 declaration that SCGLC owns the copyright registration, trademark infringement and unfair  
21 competition, and deceptive, false, and misleading advertising. (Dkt. No. 19) Counterclaim  
22 Defendants answered and counterclaimed on April 27, 2015. (Dkt. No. 24) SCGLC and ST  
23 answered this pleading on May 26, 2015. (Dkt. No. 34)

24 At the first Case Management Conference, the matter was directed to the Court's ADR  
25 program. The parties stipulated to a hybrid mediation/early neutral evaluation and stipulated to  
26 an informal and limited pre-ADR discovery process to reduce both the disruption to business and  
27 the financial burden on the parties.

28 On October 29, 2015, the parties participated in an agreed upon hybrid mediation/ENE,  
which was conducted as a mediation only. At the next Case Management Conference the parties  
agreed to an ENE, and on April 29, 2016, the parties participated in an ENE. The parties  
concluded a settlement agreement as to material terms, but the parties were unable to finalize a

1 settlement agreement before the continued deadline for dispositive motions. Defendants  
2 therefore bring this motion to preserve their right to seek summary judgment.

### 3 **III. FACTUAL BACKGROUND**

4 Rajala was a founding member of SCGLC and its former executive director. She resigned  
5 her position on September 21, 2010, ten days after the Board of Directors of SCGLC demanded  
6 that she stop her self-dealing and other activities contrary to the goals of and against the best  
7 interests of SCGLC, including the formation and operation of a business entity directly  
8 competitive to SCGLC while she was still acting as SCGLC's executive director.

9 Immediately after her resignation, to the surprise and dismay of GoLocal, Rajala claimed  
10 that she personally owned certain SCGLC assets – specifically, the logos used by SCGLC in its  
11 business – and made unreasonable demands on SCGLC based on the false claims of ownership.  
12 When her demands and tactics failed, she filed this lawsuit.

13 Defendant SCGLC is a network of locally-owned businesses, residents, non-profit  
14 organizations, and government agencies working collectively to build a thriving, local economy  
15 by supporting local, independently-owned businesses and promoting sustainable practices.  
16 Defendant ST is worker-owned and cooperatively managed and provides strategy, organizational  
17 tools, and technology for communities and organizations trying to build local economies. In  
18 February 2012, SCGLC and ST entered into a contract under which ST would provide services  
19 to SCGLC, including certain IT functions, implementing and managing a rewards card program,  
20 and processing SCGLC memberships.

21 SCGLC came into existence in early 2008, but its formation history dates back to 2006,  
22 when Don Shaffer, BALLE's second executive director, asked Terry Garrett ("Garrett") to  
23 explore starting a local business network in Sonoma County. "BALLE", an acronym for the  
24 Business Alliance for Local Living Economies, is an organization devoted to advancing  
25 economic "localism." At that time, BALLE had its national headquarters in San Francisco, but it  
26 had no networks in California. Garrett was living in Sonoma County at the time and was working  
27 as a business and marketing consultant for BALLE. Garrett was attending meetings of the  
28 Sebastopol Economic Forum, where he met Philip Beard and Derek Huntington. Shaffer later  
introduced Garrett to Chris Mann ("Mann"), and Scott Leonard ("Leonard"), and Matt Reynolds  
("Reynolds"), each young business leaders and entrepreneurs in Sonoma County, and suggested  
they be included in efforts to start a network.

1 Garrett worked with Huntington, Mann, and Leonard, along with Phillip Beard  
2 (“Beard”), Rajala, and many others, to get the Sonoma County chapter of BALLE named and  
3 underway. Even though “Sonoma County BALLE” was aligned with BALLE values, a rift  
4 within the steering committee members of BALLE Sonoma County, and a request by BALLE  
5 national not to incorporate the BALLE name in a local chapter, motivated a majority of the  
6 steering committee, including Huntington, Mann, Beard, Rajala, and others, to break away from  
7 BALLE and form a separate company with its own leadership and control.

8 Working independently of BALLE Sonoma County, another small group, self-identified  
9 as the “Relocalizers,” was also meeting to discuss ways to promote a more sustainable and  
10 resilient local economy. The Relocalizers decided to form a cooperative that would operate under  
11 the name “Go Local.” The BALLE Sonoma County group and the Relocalizers eventually  
12 learned of one another, and in March 2008, the groups met to explore their common ground. In  
13 short, order it was decided that it would be mutually advantageous to join forces.

14 The new group met in April 2008 and formed the “Sonoma County GoLocal  
15 Cooperative.” Using a “cooperative” model, the group collaborated in early-phase decision-  
16 making, including decisions with respect to name selection and brand ideas. It immediately  
17 adopted as its name the name that the Relocalizers had coined, viz., “Go Local.” The members of  
18 the group met to discuss the association’s initial tasks and goals, and to divide the tasks among  
19 the members according to members’ respective interests and skills. Among the tasks and goals  
20 was to transform the association into a corporation in a relatively short period of time. To that  
21 end, steps were taken to form a corporation. This culminated in the formation of SCGLC, a  
22 California corporation, on October 16, 2008, at which time the assets of the association,  
23 including any intellectual property and property rights, were merged into and/or assigned and  
24 transferred to SCGLC.

25 Also among the original tasks and goals was the creation of logos, slogans, and other  
26 identifying indicia for use by the association and its constituents (i.e., its local business  
27 members). A sub-group of the association’s members, including Rajala, was assigned the task of  
28 creating logos, designs and the like, for presentation to all of the members for their consideration,  
modification, and, upon reaching a consensual approval, adoption and use. Thus, logo design  
was within the scope of Rajala’s regular and ordinary responsibilities for the association. Work  
was done under tight time constraints in April 2008 so that logos would be ready for the

1 Sustainable Enterprise Conference (“SEC”) that would take place in May of 2008. All of the  
2 members of the group understood that the association would participate in SEC as an association,  
3 not as individuals or even an association on behalf of the individuals. **[Ex. 1, Decl. of David**  
4 **France; Ex. 1A, excerpts, Depo of David France (38:23-40:1); Ex. 2, Decl. of Joseph**  
5 **Faleczyk; Ex. 3, Declaration of Jay Beckwith; Ex. 4, Decl. of Christopher Mann; Ex. 5,**  
6 **Decl. of Derek Huntington; Ex. 6, Decl of Philip Beard; Ex. 7, Decl. of Oren Wool]**

7 The initial concepts for the association’s logos and slogans were inspired by BALLE  
8 materials and guides regarding how to launch and brand “local first” campaigns. Rajala merely  
9 modified certain BALLE materials and presented the “concept” (as opposed to a finished  
10 product) to the sub-group for input and modification. As evidenced by correspondence among  
11 the sub-group members, including Rajala, Huntington, and Mann, the sub-group members  
commented upon and modified Rajala’s initial concept. **[Id.]**

12 Early in this process, Rajala wrote, “Let’s all get together and modify / refine this concept  
13 and define our next steps.” **[Ex. 8]** Changes from Rajala’s initial concept included changes in  
14 fonts, comparative sizes of logos elements, removal of text originally included, and the like, all  
15 of which contributed to the overall look of the logos. The logos developed in advance of the SEC  
16 (the “Original Logos”) were thus a joint, collaborative effort among Rajala, Huntington, Mann  
and possibly others.

17 The design of the Original Logos was subject to the specifications, requirements and  
18 instructions of the association, and the Original Logos’ ultimate appearance, adoption and use  
19 were subject to the approval of the association.

20 According to plan, the association displayed and used certain of the Original Logos at,  
21 and in connection with, the SEC, thereby commencing trademark and/or service mark of the  
22 Original Logos.

23 Subsequent to the SEC Conference, in the early summer of 2008, Rajala left for  
24 Minnesota, where she remained throughout the summer and into the fall of 2008. David France  
25 acted as the interim director of GoLocal, focusing his attention on researching and preparing an  
26 application to incorporate as a California cooperative. **[See Ex. 1, Decl. of France]** The group  
27 members were unaware of whether Rajala intended to return to Sonoma County, and thus whether  
28 she would have anything further to do with the Go Local project. But the group continued work

1 entirely independently of Rajala – nothing about the continued work depended on her presence in  
2 any way.

3 As it turned out, Rajala did return to Sonoma County in the early fall of 2008 and  
4 reconnected with the group. Then, on October 16, 2008, the association changed its business  
5 entity status (previously an unincorporated association) and merged into SCGLC at the time of  
6 SCGLC’s incorporation under California law as Sonoma County GoLocal Cooperative,  
7 Incorporated. All members of the association approved the formalization and fully understood  
8 that SCGLC would carry on legally as a surviving entity, that all of the assets of the association  
9 would be owned by SCGLC, including all rights in intellectual property developed prior to the  
10 incorporation, if any such existed, and that the separate existence of the association would  
11 disappear at the time of incorporation. There was nothing left for the association to do once that  
12 formality was accomplished.

13 An early founder, Susan Mauk, was appointed as the first Executive Director of SCGLC,  
14 but due to a serious family illness, Ms. Mauk was forced to step down, and Rajala assumed her  
15 duties.

16 At no time during the development process leading up to the finalization and ultimate  
17 approval of the Original Logos did Rajala ever claim that she personally (as opposed to the  
18 Association) owned the Original Logos or any rights therein. **[See Exs. 1-7]** Further, from the  
19 beginning of the GoLocal logo development process through the finalization and approval of the  
20 GoLocal Logos until shortly after Rajala resigned her position with SCGLC, Rajala never  
21 claimed that she personally owned the Original Logos, other GoLocal Logos, or any rights  
22 therein. Quite the contrary: during her tenure with SCGLC, Rajala affirmatively asserted the  
23 opposite position – that SCGLC owned the rights to all of the GoLocal Logos. **[Again, see Exs.  
24 1-7; Ex. 1A (60:1-62:5; 109:24-120:4; also see Ex. 9, Decl. of Tanya Narath, and Ex. 10,  
25 Decl. of David Williams)]**

26 More specifically, in or about April of 2009, Rajala, writing on behalf of SCGLC and on  
27 SCGLC letterhead, wrote to the City of Santa Rosa and alleged that certain actions the City was  
28 taking in using marketing materials similar to the GoLocal Logos were causing confusion  
between SCGLC and the City of Santa Rosa. **[Ex. 11, April 10, 2009 Ltr from Rajala to City  
of SR; and Ex. 12, April 2009 twitter feed]** As is clear from the letter itself, Rajala, did not

1 assert any rights owned by Rajala as an individual. Instead, she asserted rights owned by  
2 SCGLC.

3 In May of 2009, SCGLC made Terry Garrett (“Garrett”) its Chief Operating Officer.  
4 Garrett immediately recognized that SCGLC was short of cash and needed funding. Roughly six  
5 weeks after Garrett became COO, the SCGLC board determined that Garrett and Rajala would  
6 have joint decision-making authority. Little more than a month later, pursuant to Garrett’s  
7 recommendations, GoLocal drafted and adopted a new business plan as part of a prospectus for  
8 presentation to prospective grant fund sources and private investors. The prospectus included  
9 plans for raising bridge funding until SCGLC could become self-sustaining through membership  
10 fees. **[Ex. 13, SCGLC Business Plan]** The business plan, including the representations and  
11 warranties as to how the SCGLC would spend the funds, was drafted with Rajala’s active  
12 participation and was expressly approved by Rajala. The same business plan was used by  
13 SCGLC in soliciting and obtaining grants and other sources of funding.

14 After SCGLC gained some bridge funding in the form of grants, it formed an executive  
15 management team that included Rajala, Terry Garrett, and Derek Huntington. Garrett and  
16 Huntington believed that the management team members should remain independent contractors  
17 in relation to SCGLC, but Rajala insisted that she herself become a paid employee and act as  
18 Executive Director. Accordingly, on or about November 2, 2009, Rajala and SCGLC entered  
19 into a written contract (the “Contract”) whereby Rajala would receive compensation to act as  
20 Executive Director of SCGLC. In and as part of the Contract, Rajala made certain  
21 representations and warranties, including that she had no conflicts of interest in assuming her  
22 position as Executive Director. Further, the Contract provides that any works subject to  
23 copyright or trademark generated or conceived during the term of the agreement shall remain  
24 SCGLC’s property. **[Ex. 14, Sections 1, 5, and 6]**

25 Prior to and at the time of the execution of the Contract, Rajala did not disclose (in the  
26 Contract or otherwise), that she claimed to individually own the Go Local Logos. Such  
27 ownership would have been a direct conflict with the interests of SCGLC. As Executive Director  
28 of SCGLC, Rajala owed a fiduciary duty and other duties to SCGLC. Moreover, while employed  
by SCGLC, design and marketing duties were within the scope of Rajala’s employment. While  
employed by SCGLC, Rajala continued to develop promotional materials and to design member-  
inspired logos for membership drive campaigns.

1 A substantial portion of the GoLocal Logos Rajala designed while employed by SCGLC  
2 are among the logos over which Rajala now claims ownership and which comprise part of the  
3 “deposit” submitted to the Copyright Office as part of the application process for her Copyright  
4 Registration as asserted in the Complaint. **[Ex. 15, Copyright Registration; Ex. 16, KR0031,**  
5 **showing various GoLocal logo publication dates]** Rajala admitted that many of the GoLocal  
6 Logos featured on the copyright deposit were created and first published while she was  
7 employed with SCGLC, at least 1 year, and sometimes two years after the publication date of  
8 April 1, 2008, recited in the Registration. **[Ex. 17, Rajala deposition excerpts, pp. 90-104;**  
9 **123:5-129:22]** Many of the logos featured on the deposit sheet have initial creation and  
10 publication dates that are uncertain, as many were developed in response to prospective member  
11 requests on an *ad hoc* basis. However, comparing the copyright deposit with Rajala’s admissions  
12 regarding publication dates (including the written indications of **Ex. 16** and Rajala’s testimony  
13 relating thereto in **Ex. 17**), it is certain and undeniable that during or after Rajala’s tenure as an  
14 employed executive director, the following GoLocal Logos were created and first published: (1)  
15 CLEAN LOCAL; (2) LOCAL ARTS; (3) LIVE LOCAL; (4) LOCAL PRO; (5) LEARN  
16 LOCAL; (6) SMOKE LOCAL; (7) MEET LOCAL; (8); REPAIR LOCAL; (9) FRAME  
17 LOCAL; and (10) FIND LOCAL. Accordingly, fully 10 of the 30 GoLocal Logos appearing on  
18 the single sheet copyright deposit were created and published by SCGLC during or after Rajala’s  
19 employment with SCGLC. SCGLC has never assigned its rights in these logos to Rajala.

20 Under the express terms of Rajala’s Contract with SCGLC (**Ex. 14**), and under the  
21 applicable copyright law with respect to works for hire, SCGLC is the author and indisputably  
22 owns (at a minimum) the above-identified GoLocal Logos or a substantial portion thereof. Each  
23 of the GoLocal Logos developed after Rajala began her employment with SCGLC was  
24 appropriated by Rajala (without SCGLC consent) and used to form part of the group or  
25 compilation of logos that Rajala submitted as her deposit to the United States Copyright Office,  
26 passing them off as her own, and misrepresenting them as all having been first published in April  
27 2008.

28 In her capacity as Executive Director of SCGLC, Rajala encouraged SCGLC and its  
network of nearly 200 businesses to adopt and use the GoLocal Logos, to disseminate them in  
marketing materials and advertising, and otherwise to aggressively develop goodwill in the  
North Bay region inextricably connected to the GoLocal Logos. If Rajala actually believed that

1 she owned copyright rights in the GoLocal Logos, she entirely concealed and acted contrary to  
2 that belief. If SCGLC and its management knew that Rajala, if disaffected from SCGLC, would  
3 use a claim of personal ownership to adversely affect GoLocal, it would never have used the  
4 GoLocal Logos and would never have engaged in business with Rajala involved. This is  
5 evidenced by the fact that SCGLC was entirely blindsided by Rajala's post-resignation claim to  
6 an exclusive ownership interest of any kind in the GoLocal Logos. **[See Exs. 1-7, 9-10]**

7 As SCGLC membership grew in early 2010, the decision-making process became more  
8 formal. As a result, Rajala's level of control diminished. At about the same time, in early 2010,  
9 Rajala presented her idea of developing "Share Exchange" to the executive management team of  
10 SCGLC. At first, she proposed the project as a possible initiative for SCGLC. But because the  
11 project was not included in the business plan successfully used to solicit bridge funding, and  
12 because revenue from membership and sponsorship sales would be critical to maintain financial  
13 viability through all of 2010, the executive management team put the project on hold, pending  
14 further evaluation, until the next fiscal year. Accordingly, with sales revenue insufficient to fund  
15 SCGLC through the second half of 2010, the executive management team told Rajala that Share  
16 Exchange was expressly disapproved for any active development for SCGLC at that time.

17 Rajala disregarded the decisions of the executive management team and began covertly  
18 devoting most of her time to her individual Share Exchange project, an act of defiance that  
19 would imperil the economic viability of SCGLC. In pursuit of her own interests and contrary to  
20 SCGLC interests, she siphoned off administrative help, used GoLocal resources, and created  
21 both company and third party support for and allegiance to the Share Exchange project, working  
22 in the shadows and passing it off as a project approved by and affiliated with SCGLC.

23 In the late summer or early fall of 2010, Board members of SCGLC approached Rajala  
24 about her unwillingness to follow decision-making procedures and her failure to perform as  
25 expected. During an SCGLC Board meeting on September 10, 2010, Rajala admitted that she  
26 had not been following decision-making protocol and that she had not been giving her best and  
27 full time efforts to SCGLC. She admitted that her motivation in performing poorly was to punish  
28 SCGLC and her co-workers for not agreeing with her decisions and because she did not want  
income from her efforts to be credited to Huntington and Garrett. **[Ex. 18, SCGLC Board  
Meeting minutes, 9/10/10]**

1 During this Board meeting, Rajala apologized for her conduct and agreed to mend her  
2 ways by following the decision-making protocol and by devoting her full time and best efforts to  
3 SCGLC. Evidently having a very quick change of heart, only 10 days later, on September 21,  
4 2010, Rajala resigned as executive director and as a member of SCGLC.

5 It was only after Rajala resigned from SCGLC that she first claimed to be the owner of  
6 the Go Local Logos; at no time prior to her resignation had Rajala ever stated to any other  
7 member of the Association and/or SCGLC that she personally owned any rights in or to the  
8 GoLocal Logos. After resigning and claiming she was the owner of the GoLocal Logos, Rajala  
9 attempted to extract payment from SCGLC for the use of the GoLocal Logos. SCGLC  
10 steadfastly declined to such an improper arrangement and immediately called Rajala out on her  
11 duplicity and bad faith, all to no avail.

12 Negotiations between Rajala and SCGLC began immediately after Rajala's resignation  
13 and continued for several years regarding the use of the SCGLC "brand" and other unresolved  
14 issues relating to Rajala's resignation and departure from SCGLC. No agreement was concluded.

15 On or about June 7, 2013, more than 5 years after the alleged first date of publication for  
16 any of the GoLocal Logos, Rajala filed an application for registration of a single page containing  
17 30 individual logos (the "Deposit"), all of which contain the word "Local" together with another  
18 word (e.g., Go Local, Eat Local, Drink Local, etc.). [See Ex. 15]

19 In the copyright application, Rajala made numerous affirmative misrepresentations and  
20 failed to disclose material facts, knowing they were false. Unaware of the false information, the  
21 Copyright Office granted Rajala Copyright Registration VA 1-899-501 (the "Copyright  
22 Registration").

#### 23 **IV. LEGAL ANALYSIS**

##### 24 **A. SUMMARY JUDGMENT STANDARD**

25 Summary judgment is proper if the evidence before the Court "shows that there is no  
26 genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of  
27 law." Fed.R.Civ.P. 56(a); see also *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548,  
28 91 L.Ed.2d 265 (1986). A factual issue is "genuine" when there is sufficient evidence such that a  
reasonable trier of fact could resolve the issue in the non-movant's favor, and an issue is  
"material" when its resolution might affect the outcome of the suit under the governing law.

*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). The

1 moving party bears the initial burden of demonstrating either that there are no genuine material  
2 issues or that the opposing party lacks sufficient evidence to carry its burden of persuasion at  
3 trial. *Celotex Corp.*, 477 U.S. at 325, 106 S.Ct. 2548; *T.W. Elec. Serv., Inc. v. Pac. Elec.*  
4 *Contractors Ass’n*, 809 F.2d 626, 630–31 (9th Cir.1987). Once this burden has been met, the  
5 party resisting the motion “must set forth specific facts showing that there is a genuine issue for  
6 trial.” *Anderson*, 477 U.S. at 256, 106 S.Ct. 2505. In considering a motion for summary  
7 judgment, the court must examine all the evidence in the light most favorable to the non moving  
8 party. *United States v. Diebold, Inc.*, 369 U.S. 654, 655, 82 S.Ct. 993, 8 L.Ed.2d 176 (1962). The  
9 court does not make credibility determinations, nor does it weigh conflicting evidence. *Eastman*  
10 *Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 456, 112 S.Ct. 2072, 119 L.Ed.2d 265  
(1992).

11 **B. RAJALA’S COPYRIGHT REGISTRATION IS NOT ENTITLED TO A**  
12 **PRESUMPTION OF VALIDITY**

13 Copyright Registration VA 1-899-501, (the “Copyright Registration”) [Ex. 15], is the  
14 only registration at issue in this case. Ordinarily, a copyright registration is “*prima facie* evidence  
15 of the validity of the copyright and the facts stated in the certificate.” 17 U.S.C. § 410(c); see  
16 also *S.O.S., Inc. v. Payday, Inc.*, 886 F.2d 1081, 1085 (9th Cir.1989). Defendants therefore have  
17 the burden of rebutting the facts set forth in the copyright certificate. ..., 886 F.2d at 1085-86  
18 (explaining that section 410(c)’s presumption shifts the burden of coming forward with evidence  
19 to the defendant); see also *Lamps Plus, Inc. v. Seattle Lighting Fixture Co.*, 345 F.3d 1140, 1144  
20 (9th Cir.2003). “ ‘To rebut the presumption [of validity], an infringement defendant must simply  
21 offer some evidence or proof to dispute or deny the plaintiffs *prima facie* case of infringement.’ ”  
22 *Lamps Plus, Inc.*, 345 F.3d at 1144, quoting *Entm’ Research Grp., Inc. v. Genesis Creative Grp.,*  
23 *Inc.*, 122 F.3d 1211, 1217 (9th Cir.1997). A certificate does not prove and resolve a plaintiff’s  
entire infringement case; a copyright registration must be properly obtained. 17 U.S.C. § 408(c).

24 If the plaintiff in a copyright infringement action does not have a valid registration of its  
25 work, or cannot establish any of the elements of its claim, summary judgment for the defendant  
26 is appropriate. See, e.g., *Benay v. Warner Bros. Entm’t Inc.*, 607 F.3d 620 (9th Cir. 2010)  
27 (summary judgment for defendants on plaintiffs copyright infringement claim affirmed on the  
28 ground that defendants’ film was not substantially similar to the protected elements of plaintiff’s  
screenplay); *Lamps Plus, Inc.*, supra (summary judgment for defendant in a copyright

1 infringement action affirmed on the ground that plaintiff was “unable to survive the necessary  
2 first step of an infringement action because the copyright is invalid”); *Kodadek v. MTV*  
3 *Networks*, 152 F.3d 1209 (9th Cir. 1998) (summary judgment in copyright infringement action  
4 affirmed because plaintiff’s registration was invalid).

5 The Copyright Registration bears an effective date of October 7, 2013, and a filing  
6 (certification) date of June 7, 2013. The date of 1<sup>st</sup> publication is indicated as April 1, 2008.

7 As provided in 17 U.S.C. § 410(c), “[i]n any judicial proceedings the certificate of  
8 registration made before or within five years after first publication of the work shall constitute  
9 *prima facie* evidence of the validity of the copyright and of the facts stated in the certificate. The  
10 evidentiary weight to be accorded the certificate of a registration made thereafter shall be within  
11 the discretion of the court. “[W]hen more than five years has elapsed between first publication  
12 and registration, the court is not required to accept the *prima facie* validity of the  
13 copyright.” *Brown v. Latin Am. Music Co.* 498 F.3d 18 (1st Cir. 2007) In that case, the district  
14 court explained that Congress included this five-year provision in the Act of 1976 “on the ground  
15 that the longer the lapse of time between publication and registration, the less likely to be reliable  
16 are the facts stated in the certificate.” *Brown*, slip op. at 7-8 (citing 3 Nimmer on Copyright § 12-  
11 and *Cabrera v. Teatro del Sesenta, Inc.*, 914 F.Supp. 743 (D.P.R.1995)).

17 Thus, a registration within five years of first publication is accompanied by a  
18 presumption of validity of the copyright, whereas a registration obtained after five years benefits  
19 from no presumption, and the weight given to such a registration is “within the discretion of the  
20 court.” 17 U.S.C. § 410(c). See 3 Nimmer on Copyright, § 12.11, at 12-195 \*2424 (2006) (“The  
21 significant difference between these two provisions [of the 1909 and 1976 Acts] is that the *prima*  
22 *facie* effect of registration was achieved under the 1909 Act whenever registration occurred  
23 whereas, under the current Act, it is limited to those registrations that occur before, or within five  
24 years after, first publication of the work.”)

25 In the instant case, no presumption of validity should be given to the registration,  
26 particularly in view of Rajala’s numerous misrepresentations made to the Copyright Office.  
27  
28

1                   **C. THE COPYRIGHT REGISTRATION IS INVALID AND SHOULD**  
2                   **BE CANCELLED**

3                   **1.       Rajala Does Not Have a Valid Group Registration Because the**  
4                   **Individual Logos Do Not Share the Same Publication Date**

5                   Rajala’s copyright registration is an invalid group registration and an invalid single work  
6 registration. Without a proper registration, Rajala cannot maintain her claims for copyright  
7 infringement against SCGLC and ST. As a prerequisite to maintaining an action for infringement  
8 of a copyright, the plaintiff must have properly registered the copyright with the Copyright  
9 Office. See, e.g., *S.O.S., Inc. v. Payday, Inc.*, 886 F.2d 1081, at 1085; 12 U.S.P.Q.2d 1241  
(1989).

10                  Rajala’s copyright registration at issue in this case contains thirty (30) separate logos set  
11 out on a single sheet in simple rows and columns (specifically, 5 rows of 4 columns, plus 2 rows  
12 of 5 columns, for a total of 30 logos). The logos as shown in the single sheet have never been  
13 used in the form shown as the Deposit, and not all of the logos individually have been used by  
14 Defendants, even as individual logos. Those that have been used, have been used individually or  
15 at times in groups or subsets of the logos shown in the Copyright Deposit.

16                  Under the Copyright Act, there are only two possible ways that a copyright claimant can  
17 obtain a single registration for a set of multiple works: (1) a group registration, or (2) a single  
18 work registration.

19                  Without any presumption of validity available, and in the face of evidence showing the  
20 invalidity of her registration, to establish the validity of her copyright registration, Rajala must  
21 show that she has satisfied the requirements for registration set forth in the federal regulations  
22 promulgated by the Register of Copyrights (“the Register”). Under the regulations, a copyright  
23 claimant must file a separate application to obtain a separate registration for each creative work  
24 for which the claimant seeks protection. See 37 C.F.R. § 202.3(a)(2)(i).

25                  A claimant may register multiple works through a single application by satisfying the  
26 regulatory requirements for either a “group registration,” see 37 C.F.R. § 202.3(b)(5)-(11), or a  
27 “single work” registration for a group of published or unpublished works, see id. § 202.3(b)(4);  
28 see Compendium III: Compendium of Copyright Office Practices § 1100 (2014).

                  A work is “published” for purposes of the Copyright Act when copies of the work are  
distributed to the public “by sale or other transfer of ownership, or by rental, lease or lending” or

1 offered to be distributed “to a group of persons for purposes of further distribution.” 17 U.S.C. §  
2 101. Since logos are not covered by any of the categories of works that may be covered by  
3 “group registration,” see 37 C.F.R. § 202.3(b)(5)-(1), and Rajala’s registration protects a group  
4 of logos that were published in advertising material, brochures, the SCGLC website, and through  
5 use by SCGLC members, Rajala must show that her registration satisfies the regulatory  
6 requirements for “single work” registration for a group of published works.

7 The Federal District Court for the Central District of California explained in *Olander*  
8 *Enterprises, Inc. v. Spencer Gifts, LLC*, 812 F.Supp.2d 1070 (C.D. Cal., 2011), “[a] claimant  
9 may obtain a “single work” registration for a group of published works if “all copyrightable  
10 elements ... are otherwise recognizable as self-contained works,” the works “are included in a  
11 single unit of publication,” and “the copyright claimant is the same” for all of the works. *Olander*  
12 at 1076, citing 37 C.F.R. § 202.3(b)(4)(i)(A). Rajala cannot dispute that the individual GoLocal  
13 Logos are recognizable as self-contained works, inasmuch as each was created separately and  
14 many are frequently used by GoLocal members separately. Under similar facts, the Court in  
15 *Olander* held:

16 “The Court is persuaded that a group of published works must be first  
17 published together in order to qualify as a ‘single unit of publication’ for purposes  
18 of a ‘single work’ registration. Informal guidance provided by United States  
19 Copyright Office states that only those individual works ‘*first published* in a  
20 single unit of publication’ will be covered by the single work registration. *Id.*,  
21 citing *Compendium II: Compendium of Copyright Office Practices* § 607.01  
22 (1984) (emphasis added); *see also* U.S. Copyright Office, *Help: Type of Work*,  
23 <http://www.copyright.gov/eco/help-type.html> (last visited Aug. 19, 2011) (“To  
24 register multiple individual works contained in the same unit of publication with a  
25 single application, the following requirements must be met: This publication must  
26 represent first publication of all of the works included in the registration. The  
27 registration must exclude any previously published work.”). There is no  
28 controlling authority directly interpreting the “single unit of publication”  
requirement. *See United Fabrics Int’l, Inc. v. C & J Wear, Inc.*, 630 F.3d 1255,  
1259 (9th Cir.2011) (noting that “a necessary element of a published-collection  
copyright is that the collection is sold, distributed or offered for sale concurrently”  
but that there is no such requirement for an unpublished collection). But the Ninth  
Circuit has held that courts should generally defer to the Register’s interpretation  
of copyright statutes and regulations, *see Richlin v. Metro-Goldwyn-Mayer*  
*Pictures, Inc.*, 531 F.3d 962, 973 (9th Cir.2008) (discussing Ninth Circuit  
precedent in which the court deferred to the Register’s reliance on the  
Compendium of Copyright Office Practices), and the few other courts who have  
addressed the issue have also deferred to the interpretation offered by the United

1 States Copyright Office. *See Kay Berry, Inc. v. Taylor Gifts, Inc.*, 421 F.3d 199,  
2 206 n. 2 (3d Cir.2005) (noting government’s interpretation that only those  
3 individual works first published in the single work will be covered by the single  
4 work registration but remanding to district court to determine in the first instance  
5 whether that interpretation presents a barrier to plaintiff’s copyright registration);  
6 *McLaren v. Chico’s FAS, Inc.*, No. 10 Civ. 2481(JSR), 2010 WL 4615772, at \*2–  
7 \*3 (S.D.N.Y. Nov. 9, 2010) (noting that Copyright Office’s interpretation is  
8 entitled to at least some deference and concluding that “the most natural reading”  
9 of the regulation’s requirement is that the works must be first published together  
10 to qualify as a single unit of publication). Moreover, the Court has not identified  
11 any other court that has rejected the interpretation that works must be first  
12 published together in order to satisfy the single unit of publication requirement.”

13 *Id.*, at 1076-1077. [See also, *Compendium III: Compendium of Copyright Office*  
14 *Practices* § 1100, esp. §§ 1101-(2014)]

15 Under this interpretation of a “single unit of publication,” Rajala’s copyright registration  
16 is not valid because the undisputed evidence shows that many of the individual GoLocal Logos  
17 were first published separately, at different times, in different publications, independently of  
18 many if not most other GoLocal Logos, and not as a single unit of publication. On the contrary,  
19 the evidence shows that after the creation and publication of the Original GoLocal logos at the  
20 May 2008 SEC conference, the other GoLocal Logos were developed and separately published  
21 over the course of several years.

22 As shown above [Exs. 15-17], many of the GoLocal Logos were first created and  
23 published years after the Original GoLocal Logos were created and published. Over coached,  
24 and at times painfully evasive in her deposition, Rajala attempted to avoid directly answering  
25 questions about the registration and the alleged publication dates of the various logos. [See Ex.  
26 17, pp. 90-104; 123:5-129:22] Rather than admitting the obvious – that numerous logos  
27 appearing on the Deposit were published long after the alleged first date of publication – she  
28 attempted to characterize all of the GoLocal Logos as “derivatives” or “modifications” of a logo  
she allegedly created years earlier, in 2002. However, despite her best efforts at obfuscation and  
misdirection, she admitted that many GoLocal Logos were, in fact, published on a date after  
April 2008. [Again, see, Ex. 17, Depo. of Rajala, 90:4-104:4] The registration and the attached  
exhibits – even Rajala’s own testimony – bear out the truth of the matter.

Because Rajala cannot show that her copyright registration protects the collection of  
logos first published in a single unit of publication as required by the “single work” registration

1 regulations, Rajala cannot prove that she owns a valid copyright registration. Accordingly,  
2 Defendants are entitled to judgment as a matter of law with respect to Rajala's copyright  
3 infringement claims. See *Olander* at 1079.

4 **2. The Copyright Registration Contains Inaccurate Information Rajala**  
5 **Knew to Be False and That Information Would Have Caused the**  
6 **Register to Refuse Registration**

7 Prior to filing a complaint, Section 411 of the Copyright Act requires that a work be  
8 registered with the Copyright Office. Section 411(b), further states:

9 (1) A certificate of registration satisfies the requirements of this section  
10 and section 412, regardless of whether the certificate contains any inaccurate  
11 information, unless:

12 (A) the inaccurate information was included on the application for  
13 the copyright registration with knowledge that it was inaccurate; and

14 (B) the inaccuracy of the information, if known, would have  
15 caused the Register of copyrights to refuse registration.

16 (2) In any case in which inaccurate information described under paragraph  
17 (1) is alleged, the court shall request the Register of Copyrights to advise the court  
18 whether the inaccurate information, if known, would have caused the Register of  
19 Copyrights to refuse registration.

20 In the copyright application, Rajala identified herself as the sole author and as the sole  
21 claimant. Rajala was not the sole author. Rajala identified herself as the sole claimant (or owner).  
22 Rajala was not and could not be the sole owner or sole claimant. Rajala also claimed the Deposit  
23 was first "published" on April 1, 2008. However, no party, including Rajala, has ever published  
24 the Deposit. Indeed, the Deposit is actually a compilation of individual GoLocal Logos [see 17  
25 USC §101] that SCGLC has developed over the entirety of its existence, including during its  
26 preformation phase as an unincorporated Association. Many of the individual logos have either  
27 never been published or were first created and published after the date that Rajala's Employment  
28 Contract with SCGLC commenced. Further, and as noted above, several of the individual logos  
forming a part of the 30 logos comprising the Deposit were created after the term of Rajala's  
Employment Agreement with SCGLC commenced, in late 2009, such that an earlier publication  
date would have been impossible. Further still, several of the GoLocal Logos have never been  
published in any form at any time. Those include: SMOKE LOCAL; FIND LOCAL; MEET

1 LOCAL; and FRAME LOCAL. It was therefore impossible for the Deposit to have been  
2 published on or before on April 1, 2008.

3 Rajala did not inform the Copyright Office that the Deposit and several elements  
4 comprising the compilation had never been used or published and that the Deposit in the form  
5 submitted had never been published. At the time she filed the copyright application, Rajala knew  
6 that the Deposit had never been published in the form presented to the Copyright Office, and she  
7 further knew that numerous elements included in the Deposit were first created long after the  
8 alleged first publication date. Since she “created” the Deposit by collecting and assembling a  
9 collection of preexisting materials (viz., individual logos), the Deposit is considered a  
10 compilation (as the term is used in copyright law) [see III.E, below].

11 Rajala failed to disclose that the Deposit was a compilation of elements (individual  
12 logos), by reciting a false publication date that was long before many of the elements comprising  
13 the work were even conceived and created, and by failing to disclose SCGLC as a claimant. At  
14 the time of filing the application, Rajala knew full well that the statements she was making were  
15 false and that she was failing to disclose material information.

16 The Copyright Office relied on Rajala’s false statements, intentional omissions, and  
17 inaccurate information in granting the Copyright Registration. Whatever Rajala’s intent, had the  
18 Copyright Office known that there were additional authors and additional claimants, that the  
19 Deposit was a compilation, that no publication had ever been made of the Deposit, and that  
20 publication of numerous of the individual logos included in the Deposit was made only on a date  
21 much later than April 2008, it would not have granted the Copyright Registration.

22 Accordingly, as a threshold matter in this case, the Copyright Office should be consulted  
23 to determine whether there was inaccurate information in the application such that, if known,  
24 would have resulted in a refusal to register. Were such a consultation initiated, Rajala’s  
25 Copyright Registration would be invalidated and cancelled.

### 26 **3. The Logos – Individually and as Set Out in the Single Sheet of the** 27 **Deposit -- Lack Sufficient Originality and Creativity**

28 Although Rajala’s copyright registration would ordinarily constitute *prima facie* evidence  
of the validity of its claim, the analysis above shows that it is not entitled to such a presumption.  
Further, because the copyright registrar has no discretion to reject a copyright registration on  
grounds of originality, the validity of such certificates may ultimately prove that the designs are

1 not worthy of protection. Nimmer on Copyright § 7.21 [A] (1989). Presenting evidence that  
2 attacks the elements of a presumably valid copyright can lead to the cancellation of a copyright  
3 registration. Such elements include ownership, copyrightable subject matter, and originality. See  
4 *Syntek Semiconductor Co., Ltd. v. Microchip Technology Inc.*, 307 F.3d 775 (9th Cir.2002).

5 Section 308 of the Copyright Act provides:

6 Originality is “the bedrock principle of copyright” and “the very premise  
7 of copyright law.” *Feist Publications, Inc. v. Rural Telephone Service Co., Inc.*,  
8 499 U.S. 340, 347 (1991) (citation omitted).

9 “To qualify for copyright protection, a work must be original to the  
10 author,” which means that the work must be “independently created by the  
11 author” and it must possess “at least some minimal degree of creativity.” *Id.* at  
12 345 (citations omitted).

13 Section 308.2 provides:

14 A work of authorship must possess “some minimal degree of creativity” to  
15 sustain a copyright claim. *Feist*, 499 U.S. at 358, 362 (citation omitted).

16 “[T]he requisite level of creativity is extremely low.” Even a “slight  
17 amount” of creative expression will suffice. “The vast majority of works make the  
18 grade quite easily, as they possess some creative spark, ‘no matter how crude,  
19 humble or obvious it might be.’” *Id.* at 346 (citation omitted).

20 An author’s expression does not need to “be presented in an innovative or  
21 surprising way,” but it “cannot be so mechanical or routine as to require no  
22 creativity whatsoever.” A work that it is “entirely typical,” “garden-variety,” or  
23 “devoid of even the slightest traces of creativity” does not satisfy the originality  
24 requirement. *Feist*, 499 U.S. at 362. “[T]here is nothing remotely creative” about  
25 a work that merely reflects “an age-old practice, firmly rooted in tradition and so  
26 commonplace that it has come to be expected as a matter of course.” *Id.* at 363.  
27 Likewise, a work “does not possess the minimal creative spark required by the  
28 Copyright Act” if the author’s expression is “obvious” or “practically inevitable.”  
*Id.* at 363.

Although the creativity standard is low, it is not limitless. *Id.* at 362.  
“There remains a narrow category of works in which the creative spark is utterly  
lacking or so trivial as to be virtually nonexistent. Such works are incapable of  
sustaining a valid copyright.” *Id.* at 359 (citations omitted).

To qualify as an “original work of authorship”, a work must be an independent creation  
and have sufficient creativity. *Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S.  
340, 345 (1991).

See also *Compendium III: Compendium of Copyright Office Practices* § 313.4(B) (2014),  
which provides:

1 The term “*de minimis*” comes from the legal principle “*de minimis non curat lex*,”  
2 which means “the law does not take notice of very small or trifling matters.” As the  
3 Supreme Court stated, “copyright protects only those constituent elements of a work that  
4 possess more than a *de minimis* quantum of creativity.” *Feist*, 499 U.S. at 363. Works  
that contain no expression or only a *de minimis* amount of original expression are not  
copyrightable and cannot be registered with the U.S. Copyright Office.

5 In the paradigmatic and oft-cited Best Western Logo case, which provides a detailed  
6 analysis of “originality”, the Copyright Office refused registration of the Best Western logo  
7 because as a work, it failed to meet the minimal requisite creative spark necessary for  
8 registration. As can be seen in the attached **Ex. 19A**, the Best Western logo under examination  
9 “... consists of a blue, soft-angled pentagon reminiscent of the shape of a house or other  
10 dwelling. A yellow border traces the inside of the pentagon. The words “Best Western” appear  
11 one on top of each other in yellow in the center of the pentagon. Above the text is a red, stylized  
12 graphic design of a ‘crown’ or a ‘W.’” *Letter from United States Copyright Office to David*  
13 *Youssefi, Esq.*, March 6, 2002, Copyright Off. Control No. 61-319-7499(B)] [**Ex. 19; and see Ex.**  
**19A]**

14 To be entitled to copyright protection, unoriginal design elements, such as a simple circle  
15 and a few words in an unoriginal font, must be combined or arranged in an “original” manner,  
16 rather than in the mechanical application of a commonplace idea. *Feist*, 499 U.S. at 363.  
17 Registration of the Best Western logo was refused by the Office based on *Feist*.

18 Rajala (and others assisting in the creation of the original logos) accomplished nothing  
19 other than the use a single basic shape enclosing well-known words in an unoriginal, unartistic  
20 font. These are shapes and words in the public domain. As the Ninth Circuit has explained,  
21 “expressions that are standard, stock, or common to a particular subject matter or medium are not  
22 protectable under copyright law.” *Satava v. Lowry*, 323 F.3d 805, 810 (9th Cir. 2003). Basic  
23 shapes and familiar objects are not original and thus not copyrightable. 37 C.F.R. § 202.1(a)  
(familiar symbols or designs are not subject to copyright [protection]).

24 Rajala claims copyright protection for a colored circle in which (typically) only two  
25 words are enclosed: namely, “\_\_\_\_\_ LOCAL.” These designs are not in the least original.  
26 Further, the Copyright Office noted that the five-sided polygon, or pentagon, is a public domain  
27 geometric shape not subject to protection in and of itself. The small variations in shape with non-  
28 equilateral sides and curvilinearly shaped corners, which soften the angles, were considered to be

1 trivial variations. The blue and yellow coloring and the pin-stripping were also insufficient to  
2 constitute sufficient creativity. Even the red “crown” or “W” was noted to be a commonplace  
3 design insufficient to support a copyright. **[Ex 19, p. 6; and see Ex. 19A]**

4 In the present case, the individual \_\_\_\_\_LOCAL logos comprising the Deposit, when  
5 analyzed individually, also fail to meet even the low threshold for copyright protection, in that  
6 the “creative spark is utterly lacking or so trivial as to be virtually nonexistent.” Analogous to the  
7 Best Western logo, the individual Logos (with the exception of the CLEAN LOCAL and VIVA  
8 LOCAL iterations, both created in 2010) comprise nothing other than a simple geometric shape  
9 (a circle), with the words \_\_\_\_\_ LOCAL in a contrasting color rendered in a very simple sans  
10 seraph, block-type font (a simple typeface that Rajala, as an “expert” graphic designer, does not  
11 understand in the most elementary way) **[See Ex. 17, pp 23-27, 122-123]**. Unlike the Best  
12 Western logo, there is nothing nearly as creative as the house or dwelling shape, or the stylized  
13 crown or W, which might cleverly signify both “Western” and royalty, as if to suggest that  
14 guests of the Best Western might be treated like royalty.

15 As the Court in *Olander* indicated, “...the Ninth Circuit has held that courts should  
16 generally defer to the Register’s interpretation of copyright statutes and regulations, see *Richlin v.*  
17 *Metro–Goldwyn–Mayer Pictures, Inc.*, 531 F.3d 962, 973 (9th Cir.2008) (discussing Ninth  
18 Circuit precedent in which the court deferred to the Register’s reliance on the Compendium of  
19 Copyright Office Practices), and the few other courts who have addressed the issue have also  
20 deferred to the interpretation offered by the United States Copyright Office. See *Kay Berry, Inc.*  
21 *v. Taylor Gifts, Inc.*, 421 F.3d 199, 206 n. 2 (3d Cir.2005).”

22 Thus, decisions by the Register of the Copyright Office can be instructive. Numerous  
23 cases, more recent than the decision in Best Western, may be helpful to the Court in deciding  
24 how the Register would evaluate the GoLocal Logos under the originality standard. The Best  
25 Western case is but one of many that are on point relative to the works at issue. Several closely  
26 analogous official decisions of the Copyright Office regarding logos for which registrations,  
27 including the Nikken Logo case, Copyright Office Control Number: 61-209-9348 (C), October 7,  
28 2004 **[Ex. 20]** Here, the Office denied registration to a logo comprising three design elements, a  
square with rounded edges, a circle and a broad band that has been bent to represent the upraised  
arm of a stylized human figure. Two of the bands are used to represent the body of a human  
figure and a circle is used for the head. The arrangement is repeated once to create two such

1 stylized human figures that are identical in all respects except coloration; one is black and the  
2 other is white. The figures are situated so that the raised arm portion of the black figure overlaps  
3 the raised arm portion of the white figure. Both figures are circumscribed within a square with  
4 rounded edges. [*Id.* at 1, (**Ex. 20**)]

5 The appeals Board of the Copyright Office applied the principles of the Compendium to  
6 find that the logo comprised only an arrangement of a few common elements that failed to  
7 exhibit a *de minimis* amount of creativity that falls within the narrow category of works in which  
8 the creative spark is utterly lacking or so trivial as to be virtually nonexistent. [*Id.*, at 6 (**Ex. 20**)],  
citing *Feist*, 499 U.S. at 357] It held that:

9 “... consistent with *Feist*, the combination of relatively few elements – a square and a  
10 minor variation of a common symbol for man does – not rise to the level of copyrightable  
11 authorship required by *Feist*. Such a combination essentially brings together a few  
12 elements in an overall two-dimensional design which is, if not categorically  
commonplace, trivial and scant in its overall configuration.” [*Id.*, at 8 (**Ex. 20**)]

13 Another instructive decision of the Office is that relating to the GEEK SQUAD logo, for  
14 which protection was sought by Best Buy Enterprises, SR 1-73998603, April 13, 2012 [**Ex. 21**]  
15 In this case, the Copyright Office Review Board denied registration of the well-known Geek  
16 Squad logo, which is described as “an oval divided into an orange portion and a black portion. In  
17 the orange portion the word ‘Geek’ is written in black script. In the black portion, the word  
18 ‘Squad’ is printed in white.” [*Id.*, at 6 (**Ex. 21**)], which also reproduces the design for which  
registration was sought]

19 The Office denied registration and explained:

20 “In light of the fact that ‘Geek Squad’ logo contains no original text or pictorial  
21 representations, it is unclear to the Review Board why you believe this case supports  
22 registration of this logo. The logo consists solely of the brand name ‘Geek Squad’ in a  
familiar oval shape with mere variation of coloring and lettering. Similar elements alone  
or in a trivial combination were not copyrightable in *Sara Lee*.” [*Id.* at 8 (**Ex. 21**)]

23 Equally illustrative, and closely analogous to the present case, is the Office decision  
24 regarding the logo AVENUE OF THE SAINTS, SR 1-141959771, and SR 1-28587834, July 29,  
25 2011. In this case, the Office described the work as “a design of a street sign presenting the  
26 words AVENUE OF THE SAINTS in white lettering on a blue background. The four words in  
27 the name are presented in two different type fonts with the letters of ‘SAINTS’ having simple  
28 thin-line shading which follows part of the shape of the individual letters. Between the words

1 ‘AVENUE’ and ‘OF THE’ is an orange fleur-de-lis appears at the center-top of the design.” [*Id.*  
2 at 5 (**Ex. 22**)], which also reproduces the design for which registration was sought]

3 The Copyright Office Review Board denied registration, finding:

4 “[T]he Office considers the sign/logo at issue here a unified entity, where the individual  
5 elements are considered in their inter-relationship to each other, i.e., the overall selection,  
6 coordination, and arrangement of the elements. When looked at in this sense, the  
7 arrangement of the elements is that of a name, presented in two typefaces and two colors,  
8 with one standard symbol positioned at the top center of the name. Under any standard,  
9 the pictorial authorship is simply too minimal to carry a copyright claim.” [*Id.* at 9 (**Ex.**  
10 **22**)]

11 Similarly, it is unclear why Rajala believes the GoLocal Logos support registration. Even  
12 a cursory review of the individual GoLocal Logos populating the single page of the Copyright  
13 Registration shows that they include fewer even potentially artistic elements than any of the  
14 logos that were at issue in the above-described unsuccessful registration efforts. The GoLocal  
15 Logos comprise nothing more than a circle with an ordinary color and very ordinary typeface  
16 with only two words, which if not categorically commonplace, are trivial and scant in their  
17 overall configuration. Under any standard, the pictorial authorship is simply too minimal to carry  
18 a copyright claim. Thus, none of the individual logos includes sufficient originality to warrant  
19 copyright protection.

20 Further, even if the Deposit for the Copyright Registration at issue in this case is properly  
21 treated as a compilation, the compilation lacks sufficient originality and/or creativity to warrant  
22 copyright protection. Rajala’s selection, coordination, and arrangement of the individual logos  
23 were mechanical and routine, commonplace, and obvious, involving nothing more than a  
24 mechanical placement in rows and columns with no possible novel or original ordering to create  
25 a distinct impression, such that even the compilation lacks sufficient originality and/or creativity  
26 to warrant copyright protection.

#### 27 **D. GOLOCAL OWNS COPYRIGHT RIGHTS IN THE LOGOS**

28 While there are material issues as to authorship of the Original Logos, and thus whether  
they are joint works, those are not issues Defendants seek to have adjudicated at this time. More  
pertinently, the GoLocal Logos developed after November 1, 2009, when Rajala was hired as  
Executive Director of SCGLC, are “works for hire” under the U.S. Copyright laws, such that  
upon completion of such works for hire, all copyright rights in and as to those logos, if any there  
be, are owned by SCGLC.

1 While employed by SCGLC, design and marketing duties were within the scope of  
2 Rajala's employment as Executive Director. While employed by SCGLC, Rajala continued to  
3 design logos and the like on behalf of SCGLC. Certain of the logos Rajala designed while  
4 employed by SCGLC are among the GoLocal Logos over which Rajala now claims ownership  
5 and which made up part of the Deposit submitted to the Copyright Office as part of the  
6 application process for her Copyright Registration.

7 Accordingly, if the Copyright Registration were valid, SCGLC is the joint author, owner,  
8 and/or joint owner of the Copyright Registration and/or underlying substantive rights by  
9 operation of the work for hire doctrine.

10 **E. THE SINGLE SHEET REGISTRATION IS A COMPILATION THAT**  
11 **INCLUDES MATERIAL NOT IDENTIFIED AS PREEXISTING,**  
12 **UNLAWFULLY USED BY RAJALA, AND PROVIDES THIN**  
13 **PROTECTION THAT SCGLC HAS NOT INFRINGED**

14 Even if the Copyright Registration and the underlying substantive copyrights were  
15 considered to be valid, and further assuming that Rajala was found to be the rightful owner of the  
16 Copyright Registration and underlying substantive copyrights, SCGLC has not infringed the  
17 Copyright Registration or the substantive copyrights.

18 Rajala's rights, if any, are defined by and limited to what is shown in the Deposit. The  
19 Deposit depicts a compilation (or collective work) comprising numerous previously published  
20 discrete and separate logo images. Compendium III, at Section 508.1, explains:

21 The Copyright Act defines a compilation as "a work formed by the collection and  
22 assembling of preexisting materials or of data that are selected, coordinated or arranged in such a  
23 way that the resulting work as a whole constitutes an original work of authorship." 17 U.S.C. §  
24 101.

25 As the legislative history explains, "[a] 'compilation' results from a process of selecting,  
26 bringing together, organizing, and arranging previously existing material of all kinds, regardless  
27 of whether the individual items in the material have been or ever could have been subject to  
28 copyright."

"[t]he term 'compilation' includes collective works," which are discussed in more detail  
in Section 509 below. 17 U.S.C. § 101. Creating a collective work also "involve[s] the selection,  
assembly, and arrangement of 'a number of contributions,' because this type of work 'is a  
species of 'compilation.'" *Ibid.* Then, as set out in Compendium III, Section 508.2:

1 The fact that a compilation has been registered with the U.S. Copyright Office  
2 does not necessarily mean that every element of the work is protected by copyright. A  
3 claim to copyright in a compilation “extends only to the material contributed by the  
4 author of such work” and does not “imply any exclusive right in the preexisting  
5 material.” 17 U.S.C. § 103(b). The data, facts, or other uncopyrightable material that  
6 appears in a compilation is not protected by the copyright in that work. See *Feist*  
7 *Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. 340, 360 (1991) (stating that  
8 “the copyright in a compilation does not extend to the facts it contains”). A registration  
9 for a compilation does not cover any of the preexisting material or data that appears in the  
10 compilation unless that material or data is expressly claimed in the registration. Likewise,  
11 a registration for a compilation does not cover any previously published material,  
12 previously registered material, public domain material, or third party material that  
13 appears in the compilation. “This inevitably means that the copyright in a factual  
14 compilation is thin. Notwithstanding a valid copyright, a subsequent compiler remains  
15 free to use the facts contained in another’s publication to aid in preparing a competing  
16 work, so long as the competing work does not feature the same selection and  
17 arrangement.” *Id.* 499 U.S. at 349.

18 When registering a compilation, the applicant should identify the preexisting  
19 material or data that the author selected, coordinated, and/or arranged. If the compilation  
20 contains an appreciable amount of previously published material, previously registered  
21 material, public domain material, or material owned by a third party, the applicant  
22 generally should limit the claim to the new material that the author contributed to the  
23 work and the unclaimable material should be excluded from the claim. For guidance on  
24 this procedure, see Chapter 600, Section 621.8(E).

25 The author of a compilation may claim copyright in an original selection,  
26 coordination, and/or arrangement of preexisting material, provided that the material has  
27 been used in a lawful manner. Section 103(a) of the Copyright Act states that the  
28 copyright in a compilation “does not extend to any part of the work” that “unlawfully”  
uses preexisting material. As discussed in Chapter 300, Section 313.6(B), this provision  
is intended to prevent “an infringer from benefiting, through copyright protection, from  
committing an unlawful act.” H.R. REP. NO. 94-1476, at 57, reprinted in 1976  
U.S.C.C.A.N. at 5671.

29 The Court will immediately appreciate from an examination of the Copyright  
30 Registration that Rajala failed to identify the preexisting materials (the previously published  
31 logos) that are coordinated and arranged on the single sheet. Indeed, she identified all of them as  
32 if they were all published at the same time as a group, yet as individual logos they all preexisted  
33 the “arrangement” presented on the single page of logos.

34 Additionally, Rajala obtained protection in parts of the work that unlawfully uses  
35 preexisting material belonging to SCGLC, without SCGLC consent or permission. As argued  
36 above, SCGLC owns the logos created while Rajala was employed with SCGLC, and Rajala  
37 cannot be permitted to appropriate images authored by and owned by another party, to obtain a

1 registration in a compilation including the misappropriated works without the owner's  
2 permission, and then to claim them as her own in an attempt to prevent the owner from their  
3 proper and lawful use.

4 Summarily: none of the logo images in the registered compilation, taken alone, is  
5 protectable under the copyright laws. If there is any protection, it resides only in the selection,  
6 arrangement, and organization of the logo images on a single sheet so as to form a composite  
7 image that makes its own impression on a viewer. Even that arrangement, however, is  
8 mechanical and commonplace, as it consists in nothing more than the placement of the circular  
9 logos in rows and columns, a mechanical and simplistic arrangement that does nothing other than  
10 separate them spatially so as to make each distinct from the others.

11 Moreover, SCGLC has never copied, reproduced, published or otherwise used the  
12 protectable aspects of the Deposit and accordingly, has not infringed Rajala's Copyright  
13 Registration or underlying substantive copyrights. As noted, the individual logos are not  
14 protectable, and any combinations used by SCGLC are not substantially similar to Rajala's  
15 Copyright Registration or underlying substantive copyrights, if any there be. Accordingly,  
16 SCGLC's use of individual logos has not and does not infringe Rajala's Copyright Registration.

## 17 **V. CONCLUSION**

18 Rajala owns nothing at issue in this case: (1) There are no copyright protectable elements  
19 in the individual logos. (2) The deposit is itself a mere mechanical application of a commonplace  
20 idea, assembling in no particularly creative way the unprotectable individual logos. (3) The  
21 predicate to this suit is a registration based on a Deposit that constitutes an improper group work  
22 registration and/or an improper compilation of logos. (4) SCGLC owns many of the logos  
23 included in the Deposit and those were used entirely without permission by Rajala in obtaining  
24 the Registration. (5) Rajala created many of the logos appearing on the Deposit while working in  
25 the scope of her employment with SCGLC. Accordingly, the copyright claims simply lack merit  
26 and Defendants are entitled to judgment as to the copyright claims and the dependent false  
27 advertising claim as a matter of law.

28 Dated: June 28, 2016

Respectfully submitted,

**STAINBROOK & STAINBROOK, LLP**

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